

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 24 January 2003

CASE NO.: 2002-CAA-24

In the Matter of:

RICHARD J. HRDLICKA,
Complainant

vs.

KNUTSON & SONS, INC.,
Respondent.

RECOMMENDED DECISION AND ORDER APPROVING SETTLEMENT

This case arises under the Clean Air Act ("CAA"), 42 U.S.C. § 7622, the Toxic Substances Control Act ("TCA"), 15 U.S.C. § 2622, and the Water Pollution Control Act, 33 U.S.C. § 1367 ("WPCA"). It was initiated on September 17, 2002, by the respondent when its counsel filed a request for a formal hearing after the Occupational Health and Safety Administration issued a determination finding that the respondent discriminated against the complainant for engaging in activities protected by the CAA, TCA and WPCA. On December 24, 2002, the parties submitted a settlement agreement to me for approval with a request that this case be dismissed.

The regulations regarding whistleblower proceedings before the Department of Labor at 29 C.F.R. Part 18 do not include provisions for resolution of a complaint through settlement. However, the regulations that set out the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges ("OALJ") provide for the disposition of cases pending before the OALJ through settlement. 29 C.F.R. § 18.9(d) provides that if the parties settle a proceeding and submit a settlement agreement to the ALJ for review, the ALJ shall accept the settlement if he or she is satisfied with the form and substance of the agreement.

The CAA, TCA, and WPCA do not specify the criteria to be applied when the Secretary reviews a settlement agreement under those statutes. However, the statutory language in the CAA and TCA regarding the Secretary's responsibilities and settlement authority is the same as that found in the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851. The ERA provision prohibiting discrimination against employees who engage in whistleblower activity provides, in relevant part, that

"[w]ithin 90 days of the receipt of [the whistleblower complaint] the Secretary *shall*, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed ... or denying the complaint.... The Secretary

may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.” 42 U.S.C. § 5851(b)(2)(A).

Similar language is found in the CAA at 42 U.S.C. § 7622(b)(2)(A) and in the TCA at 15 U.S.C. § 2622(b)(2)(A). This language has been interpreted to require the Secretary to review a settlement agreement entered into between a complainant and respondent to ensure that the settlement agreement “adequately protects the public’s interests and equitably treats the employee.” *Macktal v. Secretary of Labor*, 923 F.2D 1150, 1154 (5th Cir. 1991).

I have carefully reviewed the terms of the settlement agreement submitted in this case. The agreement provides that the respondent will pay the complainant back pay and attorney fees. It also provides that the respondent will remove references to the complainant’s termination from its employment records and will provide the complainant with a neutral employment reference. The complainant has waived his rights to any other claims that may arise out of the incidents and circumstances that gave rise to this action. Both parties were represented by counsel, and the complainant has certified that he was given sufficient opportunity to consult with his counsel before entering into the settlement. The respondent has agreed to comply with the employee protection provisions of the Clean Air Act, Toxic Substances Control Act, and the Water Pollution Control Act.

After reviewing the terms of the settlement, I find the settlement agreement to be a fair, adequate, and reasonable settlement of the complaint that led to this proceeding. I also find that it adequately protects the public interest.

Accordingly, it is hereby RECOMMENDED that the settlement agreement between the complainant, Richard Hrdlicka, and the respondent, Knutson & Sons, Inc., be APPROVED and that the matter be DISMISSED WITH PREJUDICE.



JENNIFER GEE
Administrative Law Judge

NOTICE

This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Such a petition for review must be received by the Administrative Review Board within ten (10) business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. § 24.8 (2000).